

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20619
[Redacted])	
)	DECISION
Taxpayers.)	
)	
_____)	

On August 2, 2007, the Sales and Use Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to the [Redacted] (Taxpayer) asserting amusement device permit fees and penalty totaling \$2,832 for the period July 1, 2006, through June 30, 2008.

The Taxpayer protested the Notice of Deficiency Determination timely in a letter to the Commission dated October 3, 2007, which was received as a facsimile on October 4, 2007. The Commission sent a hearing rights letter on October 19, 2007, and the Taxpayer responded. At the Taxpayer's request, the Commission held a hearing via telephone on December 3, 2007.

Having reviewed the audit file, the protest letter, applicable Idaho statutes, and other relevant information, the Commission hereby modifies the Notice of Deficiency Determination based on the following.

Background

[Redacted]. An inspection [Redacted] by a Bureau auditor on July 26, 2007, revealed 16 amusement devices that did not display current Commission-issued annual permits , also known as decals. Idaho Code § 63-3623B imposes upon owners or operators of certain amusement devices an annual permit fee in lieu of sales tax remitted from each device's revenue stream. Additionally, the statute imposes a \$50 penalty per device for the owner/operator's failure either to buy the permits or

to display the decals that are evidence the required fees have been paid. The code section is copied below:

63-3623B. Amusement devices. (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.

(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees.

(2) A person who knowingly secures or attempts to secure an amusement device permit sticker under this section by fraud, misrepresentation, or subterfuge or uses any permit issued under this section in a fraudulent manner shall be subject to a penalty of up to twenty-five thousand dollars (\$25,000).

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(h) The commission may revoke all permits of any person who operates any amusement device without complying with the provisions of this section. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(i) Permits issued under this section are transferable to another person only after written notice of the transfer is given to the state tax commission.

In the protest letter, the Taxpayer does not argue that the amusement devices require decals and agreed to purchase 14 decals for the current year (July 1, 2007 – June 30, 2008). However, the Taxpayer protests the assertion of the prior year's decal fees as well as the \$50 penalty per device for both years.

The Taxpayer stated that through September of 2007 it included money from the amusement devices in its gross business revenue subject to sales tax. The Taxpayer was not aware that the decal requirement in lieu of sales tax on amusement device revenue had been in effect since 1995 (IDAPA 35.01.02.109.02a) and that the Commission sent a compliance reminder letter regarding the decals one year prior, on October 12, 2006.

Prior to the current year, according to the Taxpayer, the amusement devices were owned by another party. According to statements made at the hearing, the Taxpayer gave that other party one-half of the proceeds for the privilege of using the devices to earn revenue. At some time this year, the Taxpayer purchased or took ownership of the devices.

Analysis

While the Taxpayer is not willing to pay the decal fee for the tax year July 1, 2006, through June 30, 2007, he admits that the amusement devices were at his business location during that time period. Further, he admits that he alone had access to the proceeds from those machines for the time period in question. For that reason, the Commission considers the Taxpayer to be “the owner or lessee or person having the right to impose a charge for use of the amusement device [and] must pay an annual permit fee” (Idaho Code § 63-3623B(b)).

For the tax year July 1, 2006, through June 30, 2007, the decal fee was \$35, or \$560 in total (16 devices x \$35). For the current year, July 1, 2007, through June 30, 2008, the fee is \$42, or \$672 in total (16 devices x \$42). The Commission will give credit for the Taxpayer’s payment of \$588 for the current year covering the purchase of 14 decals (14 x \$42). Presumably, the Taxpayer is unwilling to pay for two additional decals because he has taken two machines out of service. However, the visual inspection revealed 16 qualifying devices at the time when tax was overdue. The removal of two devices subsequent to the inspection date does not cancel the tax. There is no statutory provision for a cancellation of tax, nor a refund for tax paid, if one or more devices are removed from service. If they are in service on the first day of the tax year or thereafter, the decal fee is mandatory.

The imposition of the penalty is discretionary (Idaho Code § 63-3623B(f)(1)). The Commission herein exercises its discretion by reducing the penalty by one-half.

WHEREFORE, the Notice of Deficiency Determination dated August 2, 2007, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the Taxpayer pay the following tax and penalty:

<u>TAX</u>	<u>PENALTY</u>	<u>TOTAL</u>
\$1,232	\$800	\$2,032
	LESS REMITTED	<u><588></u>
	TOTAL DUE	\$1,444

An explanation of [Redacted] right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.